Filed 4/11/19 Citrus El Dorado, LLC v. Stearns Bank, N.A. CA4/2

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**



**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

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| CITRUS EL DORADO, LLC,<br>Plaintiff and Appellant,<br>v.<br>STEARNS BANK, N.A. et al.,<br>Defendants and Respondents. | E067610<br>(Super.Ct.No. RIC1602653)<br>OPINION |

APPEAL from the Superior Court of Riverside County. John W. Vineyard, Judge. Reversed with directions.

Everett L. Skillman for Plaintiff and Appellant.

Seyfarth Shaw, James M. Harris and Lawrence E. Butler, for Defendants and Respondents.

Plaintiff and appellant Citrus El Dorado, LLC (Citrus) obtained a loan to finance the construction of a residential housing development. The loan was secured by a deed of trust on the parcel of real property (the property) Citrus had acquired for the

development. Subsequently, after nonjudicial foreclosure proceedings, the property was sold at a trustee's sale. Documents recorded in relation to those nonjudicial foreclosure proceedings identify defendant and respondent FNBN-Rescon I, LLC (Rescon) as the present beneficiary under the deed of trust. Defendant and respondent Stearns Bank is identified as Rescon's "exclusive servicing agent." Defendant Chicago Title Company (Chicago Title) conducted the sale, acting as substitute trustee under the deed of trust.[1]

In this lawsuit, Citrus's first amended complaint alleged three causes of action against Stearns and Rescon: (1) wrongful foreclosure; (2) wrongful disseisin and ouster; and (3) conspiracy. The trial court sustained Stearns and Rescon's demurrer to the first amended complaint without leave to amend.

Citrus argues here that each of the causes of action alleged against Stearns and Rescon in the first amended complaint were adequately pleaded. We disagree. We find that the demurrer was properly sustained without leave to amend with respect to Citrus's causes of action for wrongful disseisin and ouster and conspiracy. The demurrer should have been overruled, however, with respect to Citrus's wrongful foreclosure cause of action.

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[1] Citrus's claims against Chicago Title are not at issue in this appeal. Citrus's challenges to the dismissal of those claims, as asserted in Citrus's second amended complaint, are addressed in a related appeal, *Citrus El Dorado, LLC v. Chicago Title Company*, case No. E067938.

## I. FACTUAL AND PROCEDURAL BACKGROUND

According to Citrus's first amended complaint, it purchased the property—an unimproved 9.25-acre parcel in La Quinta, California—with the intention of developing it into a residential housing tract. In 2007, Citrus entered into a "Construction Loan Agreement" with First Heritage Bank, N.A. (First Heritage) to fund construction. Under the terms of the agreement, First Heritage was to disburse to Citrus a total of $13,394,000 "in a series of incremental draws as construction of the development progressed." The loan was secured by a deed of trust on the property.

After Citrus received some, but not all, of the loan funds, First Heritage failed and was placed into FDIC receivership. The FDIC funded several more draw requests by Citrus.

In February 2009, the FDIC notified Citrus that the loan had been assigned to Stearns and that disbursements to Citrus would "be handled out of '[Stearns's] headquarters . . . .'" But when Citrus submitted a draw request to Stearns in March 2009, Stearns denied it, even though there was an "'unfunded balance'" of "at least $609,000 in the budgeted loan funds for Citrus."

In April 2009, Stearns sent Citrus a "Notice of Event of Default and Demand for Immediate Payment." The notice stated that payments required under the loan had not been made, constituting an "immediate Event of Default with no rights to cure . . . ." The notice gave Citrus several weeks to remit the "total payoff balance" of over $13 million, including a principal balance of approximately $12.7 million.

In July 2009, Chicago Title recorded a "Substitution of Trustee," substituting Chicago Title as the new trustee under the deed of trust. The document identifies Rescon as the "present Beneficiary" of the deed of trust, and shows that it was executed by Stearns as Rescon's "exclusive servicing agent."[2] On the same date, Chicago Title recorded a "Notice of Default and Election to Sell" with respect to the property, again executed by Stearns in its capacity as Rescon's "exclusive servicing agent."

In July 2009, Citrus filed suit against Stearns, Rescon, and the FDIC in Orange County Superior Court (*Stearns* action), asserting contract and tort claims and seeking to stop the foreclosure. On November 19, 2009, Citrus obtained a stay of foreclosure proceedings conditioned on the posting of a bond.

The FDIC removed the *Stearns* action to federal court, and the United States District Court (District Court) extended the stay of foreclosure proceedings. The FDIC was later dismissed from the litigation because Citrus had failed to exhaust its administrative remedies. Citrus proceeded with its claims against Stearns and Rescon, filing a third amended complaint on November 22, 2010. The third amended complaint in the *Stearns* action alleged causes of action for (1) breach of contract; (2) fraud; (3)

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[2] Stearns and Rescon are related entities. As noted in a recent federal appellate opinion arising from related litigation that is discussed in more detail below, the FDIC "created Rescon, and assigned its interest [in Citrus's loan] to it." (*FNBN RESCON I, LLC v. Citrus El Dorado, LLC* (9th Cir. 2018) 725 Fed. Appx. 448, 450.) In a separate, contemporaneous transaction, a subsidiary of Stearns "purchased the FDIC's sole membership interest in Rescon . . . ." (*Ibid.*) Stearns also "agreed to service the loan on Rescon's behalf." (*Ibid.*)

intentional interference with economic relationships; (4) negligent interference with economic relationships; (5) conspiracy; (6) quiet title; and (7) declaratory relief.

In August 2011, a jury found Stearns, but not Rescon, liable on Citrus's claims for breach of contract and negligent interference. The judgment, filed in February 2012, orders a total judgment in favor of Citrus and against Stearns in the amount of $16 million.[3] The judgment also states that during trial, after the presentation of evidence, Citrus voluntarily dismissed its claims for quiet title and conspiracy; that prior to trial the parties stipulated to dismissal of a counterclaim by Stearns and Rescon for judicial foreclosure, and that Rescon would take nothing on its counterclaim for specific performance, appointment of a receiver and injunctive relief. Stearns appealed the judgment.

In March 2013, while Stearns's appeal remained pending, Rescon brought a separate federal lawsuit (*Rescon* action), asserting a claim for judicial foreclosure against Citrus and breach of guarantee claims against three other defendants. In August 2013 the District Court stayed the *Rescon* action pending resolution of Stearns's appeal.

In January 2014, the United States Court of Appeals for the Ninth Circuit (Ninth Circuit) reversed in part the judgment in the *Stearns* action. (*Citrus El Dorado, LLC v. Stearns Bank* (9th Cir. 2014) 552 Fed.Appx. 625, 628.) The Ninth Circuit found that there was insufficient evidence to support the jury's verdict in favor of Citrus on the

[3] The jury had awarded a total of $30 million, which the District Court reduced to "avoid duplicate judgments."

negligent interference claim, and found instructional error required reversal with respect to the breach of contract claim. (*Ibid.*) The matter was remanded for a new trial on the breach of contract claim. (*Ibid.*)

In October 2014, after the Ninth Circuit issued its mandate in the *Stearns* action, the District Court lifted its stay of the *Rescon* action. In February 2015, Citrus filed a counterclaim against Rescon and an identical third party complaint against Stearns, among others, in the *Rescon* action. The counterclaim and third party complaint assert causes of action for "'Civil RICO' [18 U.S.C. § 1962(c)]," conspiracy, and declaratory relief.

Meanwhile, in November 2014, Chicago Title recorded a new "Notice of Default and Election to Sell." According to this document, there remained an unpaid principal balance on the loan of approximately $12.7 million, with a total balance due of over $20 million as of October 23, 2014. In February 2015, Chicago Title issued a "Notice of Trustee's Sale," stating that the property would be sold at public auction on March 3, 2015. Citrus filed an ex parte application with the District Court in the *Rescon* action for a stay of the foreclosure sale, but the application was denied. A "Trustee's Deed Upon Sale," recorded March 6, 2015, indicates that the public auction took place on March 5, 2015, and that Rescon was the highest bidder with a "credit bid" of $7.2 million.

On March 23, 2015, Citrus attempted to amend its counterclaim and third party complaint in the *Rescon* action to "allege causes of action arising from the March 5, 2015 foreclosure." The District Court struck those amended pleadings, however, finding them

untimely under the applicable scheduling order and Federal Rules of Civil Procedure. Citrus subsequently moved to modify the scheduling order and requested leave to amend its pleadings, but these requests were denied. The District Court also dismissed with prejudice Citrus's original, pre-foreclosure counterclaim against Rescon and third party complaint against Stearns, finding them barred by res judicata and the rule against claim splitting, as well as the applicable statutes of limitations. Rescon voluntarily dismissed its claim for judicial foreclosure.

Subsequently, the District Court consolidated for trial Rescon's breach of guarantee claims in the *Rescon* action and Citrus's remanded breach of contract claim in the *Stearns* action. The consolidated trial took place in December 2015. The jury returned a verdict in favor of Citrus on its breach of contract claim against Stearns, awarding Citrus damages of $1.2 million. It returned defense verdicts on Rescon's breach of guarantee claims. Both Stearns and Rescon appealed, but the judgments were affirmed.[4] (See *FNBN RESCON I, LLC v. Citrus El Dorado, LLC*, *supra*, 725 Fed. Appx. at pp. 450, 453.)

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[4] Stearns and Rescon have requested that we take judicial notice of the "Notice of Acknowledgment of Full Satisfaction of Judgment Against . . . Stearns Bank," filed by Citrus in the *Stearns* action on June 20, 2018. This document is irrelevant to any issue in the present appeal; it is undisputed that the judgment entered against Stearns is now final (no matter whether it has been satisfied). The request for judicial notice is therefore denied. (*Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1135, fn. 1 [material to be judicially noticed must be relevant].) Another request for judicial notice, submitted by Stearns and Rescon on the eve of oral argument, is denied both because the request was untimely and because the document they ask us to notice is not necessary to our analysis.

Citrus filed this lawsuit on March 4, 2016. The first amended complaint asserts three causes of action against Stearns and Rescon: (1) wrongful foreclosure; (2) wrongful disseisin and ouster; and (3) conspiracy. Stearns and Rescon demurred to the first amended complaint, contending that it was barred in its entirety by res judicata, and that in any case Citrus had failed to allege sufficient facts to support any of its causes of action.

In October 2016, the trial court sustained Stearns and Rescon's demurrer to the first amended complaint without leave to amend, and it subsequently entered judgment in favor of Stearns and Rescon. Citrus requested that the trial court vacate the judgment and reconsider its ruling on the demurrer. The trial court denied both requests.

## II. DISCUSSION

Citrus contends that Stearns and Rescon's demurrer should have been overruled with respect to each of the three causes of action asserted in the first amended complaint. We find that the demurrer was properly sustained without leave to amend with respect to Citrus's second and third causes of action, for wrongful disseisin and ouster and

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*[footnote continued from previous page]*
*[footnote continued from previous page]*

Similarly, Citrus has requested that we take judicial notice of various documents, notice of which is not necessary for the disposition of this appeal. Those requests, too, are therefore denied. (*Ketchum, supra*, 24 Cal.4th at p. 1135, fn. 1.)

Also pending is a motion by Citrus to strike or disregard portions of Stearns and Rescons' respondents' brief as unsupported by the record. The motion is, in substance, a superfluous and unauthorized supplemental reply brief, and is denied on that basis.

conspiracy, respectively. We agree with Citrus, however, that the demurrer should have been overruled with respect to its first cause of action, for wrongful foreclosure.

A. *Standard of Review*

On appeal from a judgment based on an order sustaining a demurrer, we assume all the facts alleged in the complaint are true. (*Pineda v. Williams-Sonoma Stores, Inc.* (2011) 51 Cal.4th 524, 528.) In addition, we consider judicially noticed matters. (*Committee for Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 42 (*Committee for Green Foothills*).) We accept all properly pleaded material facts but not contentions, deductions, or conclusions of fact or law. (*Evans v. City of Berkeley* (2006) 38 Cal.4th 1, 6.) We determine de novo whether the complaint alleges facts sufficient to state a cause of action under any legal theory. (*Committee for Green Foothills, supra,* at p. 42.) We read the complaint as a whole and its parts in their context to give the complaint a reasonable interpretation. (*Evans, supra,* 38 Cal.4th at p. 6.)

When the trial court has sustained a demurrer without leave to amend, "we decide whether there is a reasonable possibility that the defect can be cured by amendment: if it can be, the trial court has abused its discretion and we reverse; if not, there has been no abuse of discretion and we affirm." (*Blank v. Kirwan* (1985) 39 Cal.3d 311, 318 (*Blank*).) "The burden of proving such reasonable possibility is squarely on the plaintiff." (*Ibid.*) "[U]nless failure to grant leave to amend was an abuse of discretion, the appellate court must affirm the judgment if it is correct on any theory." (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.)

B. *Analysis*

1. *Wrongful Foreclosure*

Citrus contends that the trial court erred by finding that its cause of action for wrongful foreclosure is barred under the doctrine of res judicata. We agree.

The term "res judicata" has often been used by the California Supreme Court as "an umbrella term encompassing both claim preclusion and issue preclusion," which it has described as "two separate 'aspects' of an overarching doctrine." (*DKN Holdings LLC v. Faerber* (2015) 61 Cal.4th 813, 823-824.) It is claim preclusion that is relevant to this case, that is, the bar on relitigating claims "that were, or should have been, advanced in a previous suit involving the same parties." (*Id.* at p. 824.) The "driving principle" behind the claim preclusion doctrine is that the parties have already had a full and fair opportunity to litigate claims that were brought or could have been brought in the first action. (*Guerrero v. California Department of Corrections & Rehabilitation* (2018) 28 Cal.App.5th 1091, 1098 (*Guerrero*).)

Since the judgments in the *Stearns* and *Rescon* actions were issued by federal courts, the first step in our analysis would normally be to consider whether California or federal law applies. "The basic principles of claim preclusion are roughly the same under California and federal law," and it "often does not matter whether federal or state law applies . . . ." (*Guerrero, supra,* 28 Cal.App.5th at pp. 1099, 1102.) Nevertheless, "at least in the terminology we employ," there are some "key differences." (*Id.* at p. 1099.) "For example, while federal law defines a 'claim' for purposes of claim preclusion using

a transactional test, California law uses the older pleading term 'cause of action' and defines it according to the common law doctrine of primary rights." (*Ibid*.)

In this case, we find that application of California and federal claim preclusion law both lead straightforwardly to the same result, so we do not address the more difficult choice of law question. For the reasons discussed below, under either California or federal law, claim preclusion does not bar Citrus's wrongful foreclosure claim.

Federal claim preclusion law focuses on whether the two suits arise from the same "transactional nucleus of facts."[5] "'Whether two suits arise out of the same transactional nucleus depends upon whether they are related to the same set of facts and whether they could conveniently be tried together.'" (*Turtle Island Restoration Network v. U.S. Dep't. of State* (9th Cir. 2012) 673 F.3d 914, 918.) Helpfully, a number of the federal circuit courts of appeals, including the Ninth Circuit, have adopted a "'bright-line rule'" that shortcuts this analysis: "[F]or purposes of federal common law, claim preclusion does not apply to claims that accrue after the filing of the operative complaint." (*Howard v. City of Coos Bay* (9th Cir. 2017) 871 F.3d 1032, 1039-1040.)

Citrus's wrongful foreclosure claim accrued after the filing of the operative complaints in the *Stearns* and *Rescon* actions. The first element of a wrongful

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[5] A fuller articulation of the federal claim preclusion test is: "(1) whether rights or interests established in the prior judgment would be destroyed or impaired by prosecution of the second action; (2) whether substantially the same evidence is presented in the two actions; (3) whether the two suits involve infringement of the same right; and (4) whether the two suits arise out of the same transactional nucleus of facts." (*Constantini v. Trans World Airlines* (9th Cir. 1982) 681 F.2d 1199, 1201-1202).) But "[t]he last of these criteria is the most important." (*Id.* at p. 1202.)

foreclosure cause of action is that the "'trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust.'" (*Miles v. Deutsche Bank National Trust Co.* (2015) 236 Cal.App.4th 394, 408 (*Miles*).) And California courts have consistently rejected preemptive judicial actions seeking to challenge a threatened or imminent nonjudicial foreclosure. (See, e.g., *Jenkins v. JPMorgan Chase Bank, N.A.* (2013) 216 Cal.App.4th 497, 511-513, disapproved on another ground in *Yvanova v. New Century Mortgage Corp.* (2016) 62 Cal.4th 919, 939, fn. 13.) Citrus's wrongful foreclosure claim therefore did not accrue until after the March 2015 foreclosure on the property. Citrus's operative complaint in the *Stearns* action was filed in November 2010, and its counterclaim and third party claim in the *Rescon* action were filed in February 2015. Thus, under the applicable federal analysis, the wrongful foreclosure claim is not barred by claim preclusion. (See *Howard v. City of Coos Bay*, *supra*, 871 F.3d at pp. 1039-1040.)

Moreover, the result would be no different under California's "primary rights" analysis. "Under the 'primary rights' theory, a cause of action arises from the invasion of a primary right. Although different grounds for legal relief may be asserted under different theories, conduct that violates a single primary right gives rise to only one cause of action." (*DKN Holdings*, *supra*, 61 Cal.4th at p. 818, fn. 1.) In determining whether conduct violates only a single primary right, "the determinative factor is the harm suffered." (*Boeken v. Philip Morris USA, Inc.* (2010) 48 Cal.4th 788, 798.) "When two

actions involving the same parties seek compensation for the same harm, they generally involve the same primary right." (*Ibid*.)

In both the *Stearns* action and the *Rescon* action, the alleged harm for which Citrus sought compensation under various legal theories was the denial of its draw request for the remaining budgeted loan funds, and the consequential economic damages flowing from that denial. The harm for which Citrus seeks compensation by means of its wrongful foreclosure cause of action in this case is the loss of title to and possession of the property. Stearns and Rescon argue these two harms are properly treated, for purposes of the claim preclusion analysis under California law, as part of a single, more encompassing primary right, such as "loss of the value of the [p]roperty." They have not cited, however, nor have we discovered, any case authority requiring such an expansive application of claim preclusion. Nothing in the record establishes that Citrus either did, or could have, sought recompense for loss of title to and possession of the property in the *Stearns* action or the *Rescon* action. As noted, its attempt to add such a claim, once it accrued, was rejected by the federal court.

Having concluded Citrus's wrongful foreclosure cause of action is not barred by the claim preclusive effect of the prior federal judgments, we turn to the question of whether Citrus adequately pleaded the claim in other respects. We conclude that it did.

The "basic elements" of a wrongful foreclosure cause of action are: "'(1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to the power of sale in a mortgage or deed of trust; (2) the party

attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.'" (*Miles, supra*, 236 Cal.App.4th at p. 408.) "Recognized exceptions to the tender rule include when: (1) the underlying debt is void, (2) the foreclosure sale or trustee's deed is void on its face, (3) a counterclaim offsets the amount due, (4) specific circumstances make it inequitable to enforce the debt against the party challenging the sale, or (5) the foreclosure sale has not yet occurred." (*Chavez v. Indymac Mortgage Services* (2013) 219 Cal.App.4th 1052, 1062.)

Under California contract law, "hindrance of the other party's performance operates to excuse that party's nonperformance." (*Erich v. Granoff* (1980) 109 Cal.App.3d 920, 930; see Civ. Code, § 1511 ["The want of performance of an obligation . . . in whole or in part, or any delay therein, is excused . . . [¶] . . . [w]hen such performance . . . is prevented or delayed by the act of the creditor . . . ."].)

The facts expressly alleged in the complaint, together with reasonable inferences from those facts, adequately demonstrate for present purposes that Citrus's performance under the construction loan agreement—more specifically, its repayment of the more than $12 million disbursed to it pursuant to the loan agreement—was prevented by Stearns and/or Rescon. The funds from the loan were intended to finance construction of houses in the planned residential development. Repayment was to be accomplished out of revenues from the sale of completed houses. But "as a result of [Stearns's] failure to

fund" Citrus's final draw request, in breach of the terms of the agreement, Citrus "was unable to complete the development . . . and thus lost the ability to receive revenue from sales to consumers." Citrus therefore has pleaded facts from which it could reasonably be concluded that its obligation to repay the disbursed loans funds was excused. It follows that Citrus adequately alleged a cause of action for wrongful foreclosure: If Citrus was excused, either equitably or under contract law, from repaying the funds it received, the foreclosure was "'illegal'" or even, perhaps, "'willfully oppressive'"; Citrus was prejudiced by loss of its interest in and possession of the property; and no tender of any amount due would be required as a prerequisite for a wrongful foreclosure cause of action. (See *Miles*, *supra*, 236 Cal.App.4th at p. 408.)

To be sure, Stearns and Rescon may be able to demonstrate in later stages of the litigation that they did not in fact prevent Citrus from performing its obligations under the construction loan agreement, even given that the failure to approve Citrus's last draw request was a breach of contract. For example, perhaps there was some other, intervening cause, not the responsibility of Stearns or Rescon, why construction would not have been completed in any case or, even if construction of some homes would have been completed, they could not have been sold. If so, Stearns or Rescon would not have hindered Citrus's performance, and repayment would not be excused on that basis. That is a matter to be considered, however, on the basis of evidence, not as a question of the adequacy of Citrus's pleadings.

We note that Citrus has proposed, in briefing and in its pleadings, a variety of other reasons it believes the foreclosure on the property should be viewed as wrongful. We decline to address these arguments here. Having determined the first amended complaint adequately states a claim for wrongful foreclosure under one legal theory, we need not address the merits of Citrus's other theories. (See *Committee for Green Foothills*, *supra*, 48 Cal.4th at p. 42.)

2. *Wrongful Disseisin and Ouster*

Citrus cites to *Michaelian v. Elba Land Co.* (1926) 76 Cal.App.541 (*Michaelian*) to support its assertion that a cause of action for "wrongful disseisin and ouster" has "been recognized by the California courts." Neither *Michaelian*, nor any other California case, supports Citrus's assertion. Citrus's purported "wrongful disseisin and ouster" cause of action is, in every respect except its title, merely duplicative of Citrus's wrongful foreclosure cause of action, so the demurrer to it was properly sustained without leave to amend.

In *Michaelian*, the plaintiff had purchased a tract of land, together with "certain personal property," from the defendant, pursuant to a written contract. (*Michaelian*, *supra*, 76 Cal.App. at pp. 543.) The complaint alleged that the defendant seller had, approximately 42 months later, "ousted" the plaintiff from the property; that it "'put 20 men on said premises,' and, while plaintiff was absent therefrom, 'did cause the gate to be locked which closed the said premises and did thus forcibly eject plaintiff' therefrom . . . ." (*Id.* at pp. 545-546.) The Court of Appeal affirmed the judgment

awarding the plaintiff monetary damages, holding that "the plaintiff had the right to treat the defendant's act in retaking possession of the property as an act of rescission, to acquiesce therein, and to ask to be placed as near *in statu quo* as the circumstances and equities of the case would justify." (*Id.* at p. 557.)

In so holding, the Court of Appeal in *Michaelian* commented on the several possible remedies available to the plaintiff for the defendant's breach of the purchase contract, which included "[h]e could have sued in equity for specific performance of the contract and such compensatory relief by way of damages for any damage the wrongful disseizin and the like detention of the premises had entailed upon him." (*Id.* at p. 557.) Nowhere, however, does *Michaelian* recognize a cause of action for money damages for "wrongful disseisin and ouster," as Citrus would have it. Neither does any other California case. Indeed, the above-quoted passage, describing one of the remedies available to a purchaser of property who is later ousted from the property by the seller, thereby breaching the sales contract, is the *only* appearance of the phrase "wrongful disseisin" in reported California case law.

Of course, California law does recognize a cause of action for a property owner who has title to and physical possession of real property wrongfully taken from it through nonjudicial foreclosure, allowing the owner to seek monetary damages from the parties responsible. It is normally characterized as a cause of action for wrongful foreclosure. (*Yvanova v. New Century Mortgage Corp.*, *supra*, 62 Cal.4th at p. 929.) In substance, Citrus's purported cause of action for "wrongful disseisin and ouster" simply *is* a cause of

action for wrongful foreclosure, regardless of how it is titled. As such, it is wholly duplicative, and the demurrer to it was properly sustained on that basis without leave to amend. (See *Palm Springs Villas II Homeowners Assn., Inc. v. Parth* (2016) 248 Cal.App.4th 268, 290 [demurrer to duplicative cause of action properly sustained without leave to amend].)

3. *Conspiracy*

Citrus contends that the trial court erred by finding that its cause of action for conspiracy is barred under the doctrine of res judicata. We disagree.

As discussed above, federal claim preclusion law governs our analysis of whether the judgments in the *Stearns* action or the *Rescon* action bars Citrus's claims in this lawsuit. (*Guerrero*, *supra*, 28 Cal.App.5th at p. 1101.) In the *Rescon* action, the District Court, applying federal claim preclusion law, held that claim preclusion barred Citrus from again asserting a claim for conspiracy (among other claims) against Stearns and Rescon based on the same set of facts as the *Stearns* action. The District Court noted that the addition of new allegations regarding subsequent developments, including the completion of the foreclosure in March 2015, made no difference to the analysis. (See *Constantini v. Trans World Airlines, supra*, 681 F.2d at p. 1201 [a litigant cannot avoid res judicata by alleging conduct not alleged in the prior suit or by pleading a new legal theory].) We see no reason to depart from the District Court's analysis.

## III. DISPOSITION

The judgment is reversed and the matter is remanded to the trial court with directions to enter a new order sustaining the demurrer without leave to amend with respect to Citrus's second cause of action for wrongful disseisin and ouster and third cause of action for conspiracy, and overruling the demurrer with respect to Citrus's first cause of action for wrongful foreclosure. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RAPHAEL
J.

We concur:

McKINSTER
Acting P. J.

MILLER
J.